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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 94

CELESTINO IRIARTE, JR., ET AL., *Petitioners*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the district court upon the original trial (R. 315-318) and upon further proceedings after remand (R. pt. II, 23-26)[1] are not reported. The opinion of the circuit court of appeals upon the first appeal (R. pt. II, 7-19) is reported at 157 F. 2d 105. Its opinion upon the second appeal (R. pt. II, 33-40) is reported at 166 F. 2d 800.

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[1] The supplemental record of proceedings after the first appeal will be hereinafter referred to as "part II."

JURISDICTION

The judgment of the circuit court of appeals was entered March 11, 1948 (R. pt. II, 40). The petition for a writ of certiorari was filed on June 11, 1948. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the condemnation of land for the purpose of establishing a terminal and dock to serve a military establishment was authorized by the War Purposes Act of July 2, 1917.

2. Whether the courts below correctly denied petitioners' request for a jury trial.

STATUTES INVOLVED

The relevant portion of the War Purposes Act of July 2, 1917, c. 35, 40 Stat. 241, as amended (50 U. S. C. 171), provides:

> The Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants

> for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted * * *.

The relevant portions of the General Condemnation Act of August 1, 1888, c. 728, 25 Stat. 357 (40 U. S. C. 258 and 28 U. S. C. 770), are quoted in the Argument, *infra*, p. 7.

STATEMENT

The proceedings below, so far as here material, may be summarized as follows:

On May 31, 1941, the United States filed in the United States District Court for Puerto Rico its petition for condemnation (R. 8-16) and declaration of taking (R. 1-8) of the land here involved, and deposited in court $7,311.60 as estimated just compensation pursuant to the Declaration of Taking Act of February 26, 1931, c. 307, 46 Stat. 1421, 40 U. S. C. 258a. On the same day the court entered judgment on the declaration of taking and an order for immediate possession (R. 18-21). The petition alleged that the taking was for "military purposes" (R. 9) and the declaration of taking stated (R. 2):

> The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for storage and terminal facilities at an army base. The said lands have been selected by me for acquisition by the United States for use in connection with the establishment of a terminal and dock to serve the Puerto Rican General Depot, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

Petitioners filed their original answer on January 19, 1943, and amended answer on January 28, 1943 (R. 339). The amended answer did not challenge the right of the Government to condemn. It simply alleged that petitioners were co-owners of the land and that just compensation would be not less than $200,430, and demanded a jury trial (R. 25-27). At the commencement of the trial on January 28, 1943, the request for a jury was considered and denied (R. 27-31). On March 20, 1945, the court filed findings of fact and judgment fixing compensation at $33,297 (R. 311-315). Both parties appealed from this judgment (R. 330, 346).

On September 20, 1946, the circuit court of appeals reversed the judgment. It first held that the taking was authorized by the War Purposes Act of 1917 (R. pt. II, 9-10). It stated that petitioners' contention was "so lacking in merit" that it did not

consider possible impediments to considering the contention due to failure of the petitioners to raise it in the trial court (R. pt. II, 10). The appellate court next held that the trial court had correctly denied petitioners' request for a jury trial (R. pt. II, 11-12). However, the judgment was reversed upon the appeal of the United States because of error as to valuation (R. pt. II, 14-19). Upon remand, the case was re-submitted to the court upon the record on the first appeal and, on March 14, 1947, a new judgment was entered fixing compensation in the amount of $45,000 (R. pt. II, 20-26). Both parties again appealed (R. pt. II, 26-29) and on March 11, 1948, the circuit court of appeals affirmed the judgment (R. pt. II, 33-40). Petitioners' contentions were disposed of on the ground that they all had been considered on the first appeal and the court saw no reason to change the views expressed in the first opinion (R. pt. II, 36).

ARGUMENT

1. The War Purposes Act of 1917 authorized the acquisition of lands needed "for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps." Petitioners' lands were needed "to provide for storage and terminal facilities at an army base" (R. 2). In an insular possession such as Puerto Rico nothing could be more necessary for the listed military purposes than a dock at which personnel

may embark or debark and necessary supplies, equipment and materials may be landed or stored. Petitioners apparently contend (Pet. 16-17) that the 1917 Act is limited to the "site" or "location" of fortifications, coast defenses or military camps. In so doing, they ignore the other terms of the Act authorizing the acquisition of land "needed for the * * * construction or prosecution of works for" such military installations. Certainly, as the court below stated (R. pt. II, 10) Congress, by this language, intended to make such installations effective by providing access thereto and by providing lands needed for storage of ammunition and other supplies and equipment. Cf. *City of Oakland* v. *United States*, 124 F. 2d 959, 964 (C. C. A. 9), certiorari denied, 316 U. S. 679. The furnishing of access and storage facilities was incidental to establishing the army base. Cf. *Polson Logging Company* v. *United States*, 160 F. 2d 712 (C. C. A. 9).[2]

2. The Seventh Amendment did no more than preserve the right to jury trial as it existed at common law. *Baltimore and Carolina Line* v. *Redman*,

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[2] Since it is clear that the taking was authorized by the War Purposes Act of 1917 it is unnecessary to elaborate on the reasons why petitioners were not entitled to raise this question for the first time on appeal. Cf. *United States* v. *Nudelman*, 104 F. 2d 549 (C. C. A. 7), certiorari denied, 308 U. S. 589. It is likewise unnecessary to demonstrate that, in any event, the taking was authorized by the Act of July 2, 1940, c. 508, 54 Stat. 712, 50 U. S. C. App. 1171.

295 U. S. 654, 657. At common law there was no right to trial by jury in eminent domain proceedings (*Crane* v. *Hahlo*, 258 U. S. 142, 147), hence there is no constitutional requirement that such cases be tried by a jury. *Bauman* v. *Ross*, 167 U. S. 548, 593. Thus, the problem presented here is simply one of statutory construction.

Petitioners rely upon the provision of 28 U. S. C. 770 that "trial of issues of fact in the district courts, in all causes" except equity, admiralty and maritime jurisdiction and bankruptcy, "shall be by jury." This is the general provision originally adopted in the Judiciary Act of 1789, c. 20, sec. 12, 1 Stat. 79. However, the General Condemnation Act of August 1, 1888, c. 728, 25 Stat. 357 (40 U. S. C. 258), provides that the procedure in eminent domain proceedings shall "conform, as near as may be, to the practice, pleadings, forms and proceedings" of the state courts, and the War Purposes Act of 1917 contains similar provisions.[3] The law of Puerto Rico does not provide for jury trial in condemnation proceedings (R. pt. II, 11; Puerto Rico Code of Civil Procedure App. pp. 301-305). As the court below held (R. pt. II, 12), well settled principles of statutory construction lead to the conclusion that the conformity provision is controlling. First, because it is a specific provision as to the procedure to be followed in condemnation cases

[3] Puerto Rico is a "state" within the meaning of such provisions. *Perez* v. *Fernandez*, 202 U. S. 80.

rather than a general provision as to trial of civil causes. Second, because the conformity provision, which was the first statute expressly vesting the district courts with jurisdiction in condemnation causes, was enacted almost a hundred years after the provision for jury trial in civil causes became law. Shortly after the 1888 Act was passed, this Court in *Luxton* v. *North River Bridge Co.*, 147 U. S. 337, approved the conformance to state law providing for determination of compensation by commissioners with such modifications of the literal language of the local statute as may be necessary to fit the procedure of the federal court. And, since that time, it has been the universal practice of federal courts to follow the local method of trial, whether it be by commissioners, by the court, or by a jury, with such procedural modifications as may be required. See e.g. *Mallette* v. *United States*, 137 F. 2d 95 (C. C. A. 8); *United States* v. *Kennesaw Mountain Battlefield Ass'n*, 99 F. 2d 830, 834 (C. C. A. 5); *United States* v. *243.22 Acres of Land*, 129 F. 2d 678 (C. C. A. 2); *United States* v. *Lambert*, 146 F. 2d 469 (C. C. A. 2).

The decision in *Chappell* v. *United States*, 160 U. S. 499, relied upon by petitioners (Pet. 12-13) does not indicate that this understanding of many years' duration is erroneous. It has always been recognized that the local procedure need not be followed when the result would be to encumber the administration of justice. See e.g. *Forbes* v.

United States, 268 Fed. 273 (C. C. A. 5). Such was the situation in the *Chappell* case, where local law provided for an initial appraisal by a "jury of inquest" proceeding out of the presence of the court and allowed an appeal to the court sitting with a common law jury. The federal court conformed to local law in other respects but tried the question of value in the first instance by a jury before the bar of the court. This Court rejected the landowner's contention that he was entitled to a second jury trial in the court. Thus, the decision was simply that conformity to local practice should not go so far as to dispense with the presence of the judge at a jury trial or to grant two jury trials in the same court. The case did not hold that a jury trial was the exclusive method of determining compensation in federal condemnation cases. This is made clear by the fact that the *Chappell* opinion relied upon *Luxton* v. *North River Bridge Co.,* 147 U. S. 337. Moreover, in *Traction Company* v. *Mining Company,* 196 U. S. 239 (See also *Perez* v. *Fernandez,* 202 U. S. 80, 99), this Court, without mentioning the *Chappell* case, ruled that local procedure rather than the jury trial provision of the Revised Statutes governed the trial of condemnation proceedings which were removed to the fedral court because of diversity of citizenship.

CONCLUSION

The decision below is correct and presents no conflict. The petition for certiorari should therefore be denied.

Respectfully submitted,

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